



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 16 2015

The Honorable James Inhofe
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510-6175

OFFICE OF WATER

Dear Mr. Chairman:

Thank you for your June 26, 2015, letter regarding the Clean Water Act jurisdictional status of the Cargill Redwood City Site (Cargill Site), and your interest in the process for determining the scope of CWA jurisdiction.

The Cargill Site has been used for many years to collect brine in impoundments for final evaporation and salt harvesting. The brine is prepared by drawing saltwater from the San Francisco Bay and pumping it to large salt ponds for evaporation at sites around the Bay Area. The concentrated saltwater is then pumped to the Cargill Site for final evaporation and harvesting. The Corps of Engineers San Francisco District has consistently determined that salt ponds in the Bay Area are covered under the CWA, determinations that have been upheld in federal court. The Cargill Site is being proposed, in part, for conversion to development and EPA understands that it was this change that was the basis for Cargill's request to the Corps San Francisco District for a jurisdictional determination.

The EPA is responsible under the CWA for determining the scope of jurisdiction for all programs under the Act, including the section 404 permit program. The EPA and the Corps developed a Memorandum of Agreement that establishes procedures for coordination among the agencies in making jurisdictional determinations under the section 404 program. This MOA does not provide for the EPA to "take away" authority from the Corps but rather sets forth an appropriate allocation of responsibilities between EPA and the Corps. The EPA may make the final determination where there are circumstances involving significant issues or technical difficulties, and where clarifying guidance may be needed.

The EPA and the Corps San Francisco District agreed at the time Cargill requested that the EPA make the jurisdictional determination at the Cargill Site that such determination did not raise significant national policy or technical issues. It was only after Corps Headquarters took the unusual action of preparing a novel legal memorandum specific to the Cargill Site that significant legal and technical inconsistencies with past practice were identified. The novel legal theories of Corps Headquarters raised sufficient concern that the Office of the Assistant Secretary of the Army (Civil Works) chose to review the process invoked by the Corps General Counsel and his Office in this matter. The EPA, in coordination with the Office of the Assistant Secretary, determined that it was appropriate for the agency to conduct an independent review regarding CWA jurisdiction at the Cargill Site and, on that basis, designated the Cargill Site a "special case" under the MOA.

The EPA Region 9 in San Francisco is now working expeditiously to collect technical information regarding the Cargill Site to supplement the Corps record. I emphasize that the EPA has made no decisions regarding CWA jurisdiction at the Cargill Site. The agency will make a final jurisdictional determination consistent with science, the law, and our experience in San Francisco Bay. The EPA intends to make the determination with input from Cargill and the Corps San Francisco District. The process will be transparent and our record for this action will be made publicly available.

Thank you again for your letter. Please feel free to contact me if you have any additional questions or your staff may contact Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at (202)564-4836 or borum.denis@epa.gov.

Sincerely,

A handwritten signature in black ink, reading "Kenneth J. Kopocis". The signature is written in a cursive, flowing style.

Kenneth J. Kopocis
Deputy Assistant Administrator